

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN**

State Farm Mutual Automobile Insurance Company,)	
)	
)	
Plaintiff,)	
)	
v.)	Case No. 16-cv-13040
)	
Elite Health Centers Inc.,)	Hon. Avern Cohn
Elite Chiropractic, P.C.,)	Mag. Anthony Patti
Elite Rehabilitation, Inc.,)	
Midwest Medical Associates, Inc.,)	
Pure Rehabilitation, Inc.,)	
Derek L Bittner D.C., P.C.,)	
Mark A. Radom,)	
Derek Lawrence Bittner, D.C.,)	
Ryan Matthew Lukowski, D.C.,)	
Michael P. Draplin, D.C.,)	
Noel H. Upfall, D.O.,)	
Mark J. Juska, M.D.,)	
Superior Diagnostic, Inc.,)	
Chintan Desai, M.D.,)	
Michael J. Paley, M.D.,)	
Dearborn Center for Physical Therapy, LLC,)	
Michigan Center for Physical Therapy, Inc., and)	
Jayson Rosett,)	
)	
Defendants.)	

DEFENDANT JAYSON ROSETT'S
MOTION FOR A LIMITED STAY OF PROCEEDINGS

NOW COMES Defendant Jayson Rosett and moves this Court to grant this Motion for a Limited Stay of Proceedings. In support of said Motion, Mr. Rosett relies upon the Brief in Support of this Motion.

Respectfully submitted,

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/s/ Ben M. Gonek

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Dated: November 12, 2018

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FOR THE EASTERN DISTRICT OF MICHIGAN**

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Elite Health Centers Inc.,
Elite Chiropractic, P.C.,
Elite Rehabilitation, Inc.,
Midwest Medical Associates, Inc.,
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Derek L Bittner D.C., P.C.,
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Superior Diagnostic, Inc.,
Chintan Desai, M.D.,
Michael J. Paley, M.D.,
Dearborn Center for Physical Therapy, LLC,
Michigan Center for Physical Therapy, Inc., and
Jayson Rosett,

Defendants.

Case No. 16-cv-13040

Hon. Avern Cohn
Mag. Anthony Patti

**DEFENDANT JAYSON ROSETT'S
BRIEF IN SUPPORT OF MOTION FOR A LIMITED STAY OF
PROCEEDINGS**

INTRODUCTION

Before the Court is Jayson Rosett's ("Jay Rosett") Motion for a Limited Stay of Proceedings due to imminent pending criminal charges which are going to be lodged against Mark Radom, Derek Bitner, various nonparties to this litigation and himself. The charges are for alleged criminal conduct which is currently the subject matter in the instant case.

After Co-Defendant Mark Radom learned Jay Rosett was cooperating in a Federal Grand Jury Investigation, Mark Radom noticed up the deposition for Jay Rosett on November 15, 2018. Jay Rosett was scheduled to be arraigned on November 7, 2018 on criminal charges that stem from the exact same conduct that Plaintiff, State Farm, is litigating in the instant case. After Mr. Rosett was interviewed by Pretrial Services for the United States District Court Eastern District of Michigan on November 5, 2018, Mr. Rosett learned that evening the Government was postponing his arraignment.

The Government plans to proceed by indictment against Mark Radom, Derek Bittner, Jayson Rosett, and several non-parties¹ to this litigation at the same time and in the imminent future. Jay Rosett has worked out all the material terms

¹ Although there are several non-parties that are going to be named in the upcoming indictment that are not parties to the instant litigation, those parties keep coming up throughout the factual development of the instant case

of a proposed Rule 11 Plea Agreement and expects to enter a guilty plea sometime after his upcoming indictment.

Jay Rosett is seeking a limited Stay of Proceedings in this case. Rosett is simply asking the Court to grant a Stay of Proceedings to his deposition for ninety days. He is not seeking a Stay of Proceedings to all discovery, any other depositions, and/or any written discovery whatsoever.

Given the factors this Court set out by this Court in another State Farm case, it is clear Jay Rosett is entitled to a limited stay. First, the factual scenarios in both the pending case and the criminal investigation completely overlap². The instant case is a complete subset of the subject matter of the upcoming charges. Second, none of the parties would be prejudiced whatsoever. Numerous depositions are scheduled over the next two months. No party would be prejudiced by a limited stay where Jay Rosett's deposition is scheduled at the end of the fact witness depositions. Nor would such limited relief effect the Court's interest in resolving this matter expeditiously, as such a limited stay would not delay the adjudication of this matter.

As such, Jay Rosett respectfully requests that the instant motion be granted and that his deposition be stayed for at least ninety days.

². A similar case that has piggybacked from this case is Allstate v. Elite, et al, Case No 18-13484. The complaint in that case has over 1000 allegations and is more factual specific than the instant motion.

ARGUMENT

DEFENDANT ROSETT IS ENTITLED TO A LIMITED STAY OF PROCEEDINGS.

As the Sixth Circuit has instructed, “District courts generally consider and balance certain factors when determining whether a stay of civil proceedings is appropriate in a given case:

- 1) The extent to which the issues in the criminal case overlap with those presented in the civil case; 2) the status of the case, including whether the defendants have been indicted; 3) the private interests of the plaintiffs in proceeding expeditiously weighed against the prejudice to plaintiffs caused by the delay; 4) the private interest of and burden on the defendants; 5) the interests of the courts; and 6) the public interest.

F.T.C. v E.M.A. Nationwide, Inc., 767 F.3d 611, 627 (6th Cir. 2014) (citing *Chao v. Fleming*, 498 F. Supp. 2d 1034, 1037 (W.D. Mich 2007) (internal quotation marks omitted). Moreover, the Court should consider “the extent to which the defendant’s [F]ifth [A]mendment rights are implicated.” *Keating v. Office of Thrift Supervision*, 45 F 3d. 322, 324 (9th Cir. 1995)(quoting *Federal Sav. & Loan Ins. Corp. v Molinaro*, 889 F.2d. 899, 902 (9th Cir. 1989).

A. The First Factor-Factual Overlap

1. State Farm's Case

The first factor the Court must consider is the factual overlap between the two cases, i.e., the current State Farm case and the pending Federal Grand Jury Investigation/Upcoming Indictment. As the Court will see below, the State Farm's theory of the current case is a complete subset of the current Federal Grand Jury Investigation.

State Farm alleges that Defendants Bittner, Radom, Rosett, a non-party attorney and other nonparties entered a scheme around 2011 up until recently to defraud them out of monies. State Farm alleges that Defendants Bittner and Radom are at the center of the scheme to circumvent Michigan laws which limit the circumstances under which a chiropractor and a layperson may own and control entities providing medical services. State Farm alleges that Bittner, Radom and a non-party attorney fraudulently incorporated several the Defendant entities in the current case and have masked true ownership of those entities. Recent emails produced by Bittner and Radom support this theory.

State Farm further alleges that the Radom, Bittner, Rosett, and a nonparty attorney were involved in illegal solicitation of patients/clients for nonparty attorney. Specifically, State Farm is proceeding on the theory that Defendant Rosett, Radom, Bittner with the help of other non-parties bribed Detroit Police Officers to obtain unofficial police reports. State Farm further alleges in the

litigation that Jay Rosett set up the Accident Information Bureau (“AIB”) initially for soliciting individuals named in the unofficial accident reports as victims in automobile collisions for medical treatment and legal representation. State Farm is proceeding on the theory that the reports were then sent to the nonparty attorney/law firm and Defendant Radom. The emails produced by Rosett, Radom, and Bittner in this case give support for State Farm’s theory in this regard.

State Farm also alleges that AIB was utilized to launder monies paid as bribes by Bittner, Radom, the Elite Entities, and Rosett to officers for the unofficial police reports. Specifically, State Farm alleges that the Elite entities routinely wrote checks to AIB. AIB in turn wrote checks to another nonparty who in turn put the monies in a mutually accessible bank account by the nonparty police officer. Bank records in this case could be argued to support State Farm’s theory in this regard.

State Farm further alleges that after the patients were referred for treatment, the Elite Defendants and the medical providers owned by the Elite entities had a predetermined protocol for how patients were to be treated and that such treatment was medically unnecessary. Emails recently produced from Radom, Bittner, and nonparties also support this contention.

State Farm also alleges in this litigation that various providers paid kickbacks to the non-party attorney/law firm for referrals. State Farm alleges that

the Defendants paid these kickbacks directly to third parties at the nonparty attorney/law firm's direction. State Farm also alleges the Defendants formed the Elite entities to mask the true ownership of the entities and then pay monies directly back or on behalf of the nonparty attorney/law firm.

Discovery in this case has shown that Rosett paid nearly ninety thousand dollars to a contractor on behalf of a nonparty attorney/law firm. Discovery in the form of photographs and text messages in this case also revealed that at Mark Radom's direction a duffel bag of a significant amount of cash was delivered to a nonparty's house. Discovery has also revealed that Radom has given a nonparty a loan for over a million dollars payable in 45 years with no payments due in the meantime.

Based on all the above-mentioned fraudulent acts and predetermined protocol State Farm is alleging in this case that the Defendants perpetrated many fraudulent acts for getting paid under Michigan's no-fault act.

2. The Government's Criminal Case.

The Government is alleging amongst other things in their pending Federal Grand Jury Investigation that Defendants Radom, Bittner, Rosett, and various nonparties conspired together to commit bribery/theft of government property by paying police officers to obtain unofficial police reports which belonged to the Government.

The Government is also alleging in their pending Federal Grand Jury Investigation that Defendants Radom, Bittner, Rosett and others violated various income tax laws by 1) masking true ownership of corporate entities that are Defendants in this case; 2) masking illegitimate business deductions paid to nonparties in this case as legitimate business deductions; and 3) nonparties failing to properly declare kickbacks and other monies paid on their behalf as income.

The facts the Government relies on in their investigation/allegations are the same facts that State Farm relies on in support of their fraud claims. Additionally, the two offenses that the Government proposes Jay Rosett plead guilty to are Conspiring to Commit theft/bribery for government property; and Conspiracy to Defraud the Department of Treasury. The proposed factual basis for the proposed Rule 11 Plea Agreement contains the same facts that State Farm relies in support of their fraud theory for the instant case.

B. The second factor: status of the criminal case.

It is true no indictment and/or information has been filed yet. Jay Rosett was recently advised that the Government would be proceeding by indictment at the same time it did against Radom, Bittner, and other various nonparties. Mr. Rosett's best educated guess is that he will be arraigned mid-December. Mr. Rosett has worked out all the material terms to a proposed Rule 11 Plea Agreement and will probably enter the plea sometime after the arraignment.

However, most importantly both the Government and Jay Rosett have worked out all the material terms to the proposed Rule 11 Plea Agreement. Given the posture of this case, the fact that an information/indictment has not been filed yet should not weigh against a stay. See *SEC v. Downs*, 1993 U.S. Dist LEXIS 753).

C. The third and fourth factors; the interests of State Farm and Mr. Rosett, and other Defendants.

In terms of State Farm, Jay Rosett does not believe they will oppose the relief sought in this motion. State Farm will certainly not be prejudiced. As stated above numerous depositions have been scheduled and delaying Jay Rosett's deposition ninety days will not prejudice anyone.

Jay Rosett will be prejudiced if the deposition proceeds. He will have to determine if he is going to assert his Fifth Amendment rights and if he does it could make his credibility as a witness in the upcoming criminal case suffer. Additionally, if he does take the Fifth Amendment, Jay Rosett will have to contend with the law surrounding adverse inferences.

If Jay Rosett testifies substantive at his upcoming deposition, he will certainly be at a disadvantage. The alleged fraudulent/criminal conduct in this case has transpired over the course of years. The Elite Defendants have withheld emails for nearly eighteen months that should have been produced months ago. If and

once produced, those emails will certainly help Jay Rosett recall significant factors in this case that will make his deposition testimony more valuable to this case if he testifies.

The legitimate interests of the other Defendants will not be harmed if this limited stay is granted. Upon information and belief, Radom does not want Mr. Rosett's deposition for defending the instant case. Radom wants Rosett's deposition now for the upcoming criminal case. Radom either wants the deposition for discovery of the upcoming criminal case or to use the deposition to attempt to attack Mr. Rosett's credibility in the upcoming criminal case. Both reasons are impermissible and should not be allowed. See *SEC v. Downs*, supra.

D. The fifth and sixth factors: the interests of the Court and the public.

Mr. Rosett understands the Court has an interest in the expeditious resolution of matters. Mr. Rosett has not delayed this proceeding. Mr. Rosett has complied with producing the materials requested of him. The relief sought in this case will not delay the resolution at all.

The public's interest also weighs in favor of a stay. The Government's allegations against all the parties are very serious. If the allegations are true, unsuspected solicited patients/clients have been subjected to unneeded medical treatment and radiation. The public has a strong interest in making sure the

Defendants do not use this civil case as gamesmanship for the upcoming criminal case.

CONCLUSION

Wherefore for all of the above-mentioned reasons Defendant Jayson Rosett respectfully requests that this Court grant the instant motion.

Respectfully submitted,

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Certificate of Service

Ben Gonek states that on November 12, 2018 that he served via the Court's electronic filing system all counsel with a copy of this Pleading. *Signed Ben Gonek*